The Case Against Limited Nuclear War

Abridged Text: Humphrey's Historic Senate Speech Against the Murray-Teller Thesis, Pps. 2-3

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A Black Day At The U. S. Supreme Court

A new majority on the U. S. Supreme Court is beating a hasty retreat from the liberal decisions of the last few years on fundamental liberties and Negro rights. Two 5-to-4 decisions handed down last Monday give the signal for resumption of the witch hunt by Congressional committees and their "little un-American" imitators in the States. A third decision indicated to the South that the Court is being softened up on the race issue. The Barenblatt decision gives the House Un-American Activities Committee judicial approval beyond Walter's dreams. The Uphaus decision, written by Tom Clark, not only grants a similar amplitude of authority to State witch hunts but spells out sharply the limits of the *Nelson* case, indicating point by point all the States may do to harass radicals. This will be read in the South as a mandate for white supremacists, irrespective of what happens to the bills before House and Senate to restore concurrent jurisdiction to the States in the field of sedition. The Virginia NAACP case abdicates the special jurisdiction of the Federal courts in civil rights cases and makes easier the South's strategy of nullification by prolonged litigation. Monday, June 8, was a black day in the history of the Court.

The Blame Rests on Frankfurter

The sharp shift rightward occurred when the supposedly liberal Frankfurter and the conservative Harlan abandoned the position they took in the Watkins case two years ago and carried the two new judges, Whittaker and Stewart, with them. When the Court ruled 7-1 against the House Committee in the Watkins case, Clark was the only dissenter. Whittaker did not participate; Stewart was not yet on the Court. Frankfurter concurred in a separate opinion. Now the Court, in upholding the Barenblatt conviction, is 5-to-4 the other way. It is Frankfurter who deserves most to be criticized for the shift. In deserting the liberals more openly than at any other time in his tortuous judicial course, Frankfurter provided not only the swing vote but the philosophy for the victorious reaction.

The new majority does not deny that Congress through the Un-American Activities Committee makes people afraid to exercise freedom of speech, press and assembly in disagreement with the government lest they be pilloried as Communists. Congress thus does what the First Amendment forbids when it says "Congress shall make no law . . . abridging the freedom of speech, or of the press." The new majority does not deny that the law establishing the Un-American Committee does abridge basic freedoms. But it says that where First Amendment rights are asserted "resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake." This "balancing" theory is Frankfurter's pernicious contribution to constitutional law.

The Sharp Swing to the Right

"It would be difficult to imagine a less explicit authorizing resolution. Who can define the meaning of the word 'un-American?' . . . From this core . . . the Committee can radiate outward infinitely. . . . The outer reaches of this domain are known only by the content of 'un-American activities.'"

—Supreme Court reversing the contempt conviction of Watkins, June 17, 1957, through Chief Justice Warren, 7-1, only Clark dissenting.

"Granting the vagueness of the Rule [authorizing the Un-American Activities Committee], we may not read it in isolation from its long history in the House of Representatives. . . . In pursuance of its legislative concerns in the domain of 'national security' the House has clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country. . . . In this framework . . . the Rule cannot be said to be constitutionally infirm on the score of vagueness."

—Supreme Court upholding the contempt conviction of Barenblatt, June 8, 1959, through Harlan, 5-4, with Warren, Black, Douglas and Brennan dissenting.

It cuts the heart out of the First Amendment. "To apply the Court's balancing test under such circumstances," Mr. Justice Black protested for the minority, "is to read the First Amendment to say, 'Congress shall make no law abridging freedom of speech, press, assembly and petition, unless Congress and the Supreme Court reach the joint conclusion that on balance the interests of the government in stifling these freedoms is greater than the interest of the people in having them exercised'." It is Frankfurter, with his reputation as a liberal and a scholar, who has recruited a new rightist majority by winning Harlan and the two newer judges over to this doctrine. Felix Frankfurter betrayed the cause of liberty in America last Monday.

The new syllogism starts with the Frankfurter thesis that abridgement is constitutional if reasonable and proceeds to the minor premise that regulation is reasonable if it is aimed at Communists. The conclusion is that the witch hunters may do pretty much as they please so long as they claim to be hunting Communists. The effect is to outlaw the Communist party, a step (as Black points out) which Congress has several times refused to take, and to declare unlawful ideas which may be regarded as communistic. Harlan for the majority bases this on the "right of self-preservation" that oldest and mangiest crotchet of despotic government. "That notion," Black points out in a dissent which will rank as a classic in the literature of freedom, "rests on the unarticulated premise

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An Abridged Version of Humphrey's Historic Senate Speech June 4 . . .

A drive is on to convince the people of this country that their only safety lies in a continued nuclear arms race and that continued testing is necessary to develop small clean nuclear weapons so that nuclear war if it comes can be safely limited. Former AEC Commissioner Thomas E. Murray, now consultant to the Joint Committee on Atomic Energy, is a spokesman for these views. The hearings which Congressman Chet Holifield opens today, June 15, on "the effects of nuclear war", may spread them. Senator Humphrey effectively answered the limited war advocates in a Senate speech June 4 which the New York Times buried in two paragraphs of another story next day and many papers ignored altogether. We present an abridged version here.—IFS.

"Those who oppose an international agreement on the cessation of nuclear weapons tests have two main arguments," Senator Humphrey began. "One argument is that the control and inspection system would not be good enough to detect secret tests in violation of any test ban treaty that might be agreed to.

"I do not agree with those who say that the control system cannot be made to work. Furthermore I do not agree with those who say that the United States has already accepted aspects of a control system which are not sufficient to deter a violator or to catch him if he tries to sneak a few tests undetected.

"The more we promote the expansion of nuclear technology along with guided missiles, the more we shall have to rely upon the individual officer at a control post always being mentally stable, emotionally stable, having a sound mind and a sound body, one who will never do anything which will in any way jeopardize the peace of the world."

—Sen. Humphrey, U. S. Senate, June 4.

"The second argument that is given in opposition to a test ban treaty concerns a thesis of military strategy.

"First, they believe that war with the Soviet Union and perhaps Communist China is probable and, therefore, we must do everything in our power to prepare for such a war.

"Second, since a war is likely, they believe it is vital that we try to prevent it from spreading to envelop the whole world in a nuclear holocaust with the consequent possible result of the end of civilization as we know it.

"Third, if we are to limit the weapons and restrict the area of combat, they believe it is imperative that we have a large family of tactical nuclear weapons at our disposal.

"The advocates of a program of continuous atomic weapons tests say that when big hydrogen bombs are eliminated as too powerful and when conventional armaments are eliminated as not powerful enough, the only thing left is the category of small atomic weapons. They conclude that under no circumstances should the United States enter into an agreement to discontinue tests of atomic weapons at this time. Let us take a look at the weaknesses of the limited atomic war thesis.

"Weakness No. 1: The assumption that small nuclear weapons must be used as a defense against the large armies of the Soviet Union and Communist China fails to recognize that the Soviet Union also has a large supply of nuclear weapons. If small atomic tactical weapons are effective against the large armies of the Communist bloc, they are no less effective against smaller armies of the Western bloc.

"Weakness No. 2: If the United States ever became involved in using nuclear weapons against the land armies of the Chinese Communists and the Soviet Union this would probably not remain a limited war. It would become a major conflict.

"The advocates of limited atomic war are thinking primarily in terms of conflict on territory controlled neither by the United States nor the Soviet Union. It is not at all clear that third parties welcome the idea of being used as a nuclear battlefield.

"Weakness No. 3: If the United States is the first to use nuclear weapons, be they tactical or strategic, this country will be stigmatized throughout many parts of the world. We would deliver to the Communists a political victory of such proportions that any military victory, if one were achieved, might not offset the political defeat.

"Weakness No. 4: We cannot assume that all countries would risk the total devastation that would probably result from the use of nuclear weapons as the price of defense against Communist imperialism.

Putting the Finger on The Pentagon

"If the day ever comes when weapons can be launched from countries other than the major powers, how will we know at what country to strike back? . . . What if we make a mistake and unleash our retaliatory power on the wrong nation? . . .

"I do not wish to be an alarmist, but it seems to me that greater effort must be made to attempt to determine how to control this situation rather than as I believe has been happening in the last month, namely, a concerted effort somewhere in Washington—I imagine in the Defense Establishment itself—to get the American people to believe that it is not possible to reach an agreement to control these weapons."

—Sen. Humphrey, U. S. Senate, June 4.

As the Nuclear Club Begins to Enlarge, So Does the Danger of War

Sen. ANDERSON. These memoranda [on the pending nuclear give-away agreements with Canada, France, Germany, Holland and Turkey] are indicative of the fact that pretty soon other nations will join the nuclear power club. The Senator from Minnesota has said that it would be desirable to limit the membership of the nuclear power club. Here they come. . . .

Sen. HUMPHREY. The Senator from New Mexico is right. I have heard some persons speak about nuclear weapons being made available for sovereign possession by other nations. There is a difference between weapons being in our possession in Europe and under our control . . . and those weapons being in the possession of the host country. [Citing Germany as an example] . . . If we were to give our major allies complete and unlimited control over such weapons, with no restraint upon them, the Soviet Union would do the same.

Sen. ANDERSON. I have examined some installations of nuclear weapons in countries other than the United States. Without trying to say where those installations may be, I have seen many of the installations, and I do not believe that these installations are manned with a sufficient staff . . . a small group in the foreign country could very quickly take control of those weapons. My question is what would happen if they got control? Obviously it would be a group of irresponsible people. . . . *—U. S. Senate, June 4, 1959.*

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. . . Attacking the Delusion that Nuclear War Can Be Limited to Small Weapons

"There is a tendency to talk about small tactical nuclear weapons as though they were similar to the weapons of World War II, but these weapons are not similar. Our small tactical nuclear weapons contain enormous destructive power. They are small in size only, not in destructive capability. This destructive power is not only inherent in the weapon itself, but it also comes from local radioactive fallout. This local fallout can affect the water supply, the soil, foodstuffs.

"I call the attention of Senators to a very important military operation which I think substantiates my argument. Four years ago, the U. S. Army and Air Force held some joint maneuvers in Louisiana called Operation Sage Brush. This was one of the first attempts to use tactical nuclear weapons in a simulated way in local warfare. Mr. Hanson Baldwin, the eminent military specialist of the *New York Times,* who witnessed these maneuvers, termed them a "frightening experience". It was found that not only the State of Louisiana, but also an area the size of 12 States would have been devastated, the cities partially destroyed and the surviving inhabitants completely affected by radioactivity. The size of weapons used in this maneuver were the so-called small tactical, nuclear weapons, ranging from 2 kilotons to more than 40 kilotons.

Ten Bombs Would Do It—and Us

Sen. HUMPHREY. If it takes only 1,000 bombs to destroy the United States—

Sen. ANDERSON. Ten bombs. I suggest that the Senator need not go above ten bombs. Ten bombs of the size we have now, if properly dropped on populous areas of the United States, would do such damage that the Senator and I would not be much interested in what could happen to the country afterward."

—U. S. Senate, June 4, 1959.

"Operation Sage Brush took place 4 years ago. It is possible that the Armed Forces have learned how to use tactical nuclear weapons to better advantage since that time, so that the residual radioactivity will not be so damaging to civilian populations. I tried to learn something about this problem when the members of the Joint Chiefs of Staff testified earlier this year before the Disarmament Subcommittee. Unfortunately, they would not be communicative even in executive session. Their lack of candor makes me suspect that our ability to reduce local fallout in a limited atomic war has not increased in 4 years.

"I question whether any nation wants to be the battlefield for a limited atomic war, to defeat an enemy only to turn around and find even its agricultural produce has been well fertilized with radioactive dust.

"It is in the area of conventional armaments and Armed Forces that the United States and the free world should build up their defenses. Unfortunately, the administration and some of the advocates of continued nuclear testing at all costs have persuaded the American people that a defense consisting of nuclear weapons is about all that we need to have.

Small Bombs Dirtier

Sen. ANDERSON. I only wish to say to the Senator from Minnesota that without getting into classified information, the present designs of the small nuclear weapons are much more deadly per pound or ton of bang than the large weapons, because they are fission weapons. That is well established and well known.

Sen. CARROLL. This is the first time that I have heard . . . that the small nuclear weapon is dirtier from the standpoint of fallout than a large bomb.

—U. S. Senate, June 4, 1959.

"I wish to make it quite clear that I am not arguing that we should unilaterally forego the use of atomic weapons, their testing, development and production, and the determination to employ them if the world situation became so intolerable that our very existence and survival were at stake.

"Where I part company with many of my friends in the atomic weapons field is in their notion that continued atomic weapons development is more important than anything else we can do, that it is more important than trying to have an effective test ban agreement based on effective controls, more important than trying to slow down the arms race, more important than trying to prevent the spread of nuclear weapons production throughout many countries, and more important than getting the Soviet Union to accept and implement the principle that control and inspection must be parts of the reduction of armaments. It is here that the fatalism about the inevitability of another war and the skepticism and cynicism about the prospects for progress on disarmament produce a distorted concept of what the goals of our defense and foreign policy should be.

"So long as the United States views the world crisis primarily in military terms and exclusively as a crisis against communism, its moral stature and its leadership qualities will be seriously questioned. It is one thing to build varied and strong defenses, but quite another to say this defense is all we have. If the democracies of the world are to survive, they must place more emphasis and put more effort into works of peace. Defense is a shield designed to give protection and buy time while we pursue with courage, imagination, and purpose the war against man's ancient and relentless enemies—poverty, hunger, disease, illiteracy, injustice, and economic stagnation."

What Could Be Less Foolproof and More Hazardous Than A Nuclear Arms Race?

Sen. HUMPHREY. We have been told repeatedly, both in public and in executive session, that the U. S. has a more diversified arsenel and more sophisticated weapons. . . . But I have heard from the evaluation experts of the AEC that we were much further ahead 3 years ago than now. If testing continues, the gap will be narrowed. . . .

I realize also that there is no absolute guarantee of any perfect control system. There is no absolute guarantee that a pilot who is flying a plane with a bomb load will not go berserk and drop his bombs. Mental illness and emotional instability are characteristic of our times. Men who are in the very sensitive, highly important service of the defense of our country are under terrific strain. . . .

When I hear people say that we must be absolutely and positively certain that a control system is foolproof, then I ask them, What is foolproof about the continuation of the nuclear race? . . . There is as yet no one who can prove that in an uncontrolled arms race, humanity would have any assurance of peace and tranquillity.

—U. S. Senate, June 4, 1959.

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The Fight for Peace Cannot Be Won If the Fight for Free Speech Is Lost

(*Continued from Page One*)

that this Nation's security hangs upon its power to punish people because of what they think, speak or write about, or because of those with whom they associate for political purposes. The Government in its brief virtually admits this position when it speaks of the 'communication of unlawful ideas.' I challenge this premise, and deny that ideas can be proscribed under our Constitution." If the government can police against what it considers false ideas, "if we begin to punish speech," then, Black concluded, "we cannot honestly claim to be a free nation."

Hamilton's Warning in the Federalist Papers

By now, after the experience of the McCarthy years, few will be naive enough to suppose that the outlawry of the Communists is of importance only to that broken little faction of elderly sectarians. The fear of being suspected of sympathy with them has cast a pall on public discussion of all the most momentous issues before us as a people. A whole generation of intellectuals has moved into a sterile suburbia and abdicated its rights and duties in order to escape the witch hunt. The mild recovery which followed on the censure of McCarthy and the liberal decisions of the Warren court is now jeopardized. The test is the test of the people. The Congress has been afraid to vote against the House Committee and Eastland's Senate counterpart on internal security. Many in Congress hoped the Court would dispose of these odoriferous vehicles for crypto-Fascism. Now the Court has surrendered, too. Almost two centuries ago, Alexander Hamilton, defending in the Federalist Papers (No. LXXXIV) the absence of a Bill of Rights in the original draft of the Constitution, warned that the most explicit guarantee of speech and press could be twisted by legalistic exegesis into authority for the very restrictions it forbade. The Frankfurter doctrine fulfils the Hamiltonian prophecy. Hamilton also argued that basic liberties depend ultimately on "the general spirit of the people." If their concern for freedom decays, no Bill of Rights can preserve it.

This, then, is the challenge to ourselves and our neighbors. Will there be sufficient intelligence and courage to preserve what an earlier generation established with so much insight and sacrifice? We urge the widest possible circulation in discussion groups of the Black dissent in *Barenblatt* and the Brennan dissent in *Uphaus*. We urge support for all victims of the witch hunt. We urge a national emergency conference to defend the First Amendment. We believe the fight can be won despite cowardice in Congress and betrayal in the Supreme Court if enough people bestir themselves. The fight for peace cannot be won if the fight for free discussion is lost.

Both New York Senators Deceiving Harlem on That Lynching

"A restaurant operator in Harlem asks, 'Why has the FBI stopped investigating the Mack Parker lynching in Mississippi?' Because it found no violation of Federal law. . . ."—*Keating, WOR-TV, June 7.*

"They [the FBI] had to pull out because there is no Federal statute which enables a prosecution to take place."—*Javits, WPIX, June 7.*

Neither Senator told the truth. The Justice Department in dropping the Mack Parker case did not say it found no Federal law violated. It said it found no violation *of the Federal anti-kidnapping statute.* It did not say it found no violation of the Federal civil rights law. Here is the wording of the FBI release of May 25 announcing withdrawal from the case—

"This action on the part of the Justice Department was based upon a ruling that FBI investigation had clearly established that the persons responsible for the death of Parker had not violated the Federal Kidnapping Statute, *and no other successful Federal prosecution could be maintained.*" (Italics added.)

There are indications that the Federal civil rights law was violated (1) because county officials connived in the lynching and (2) the lynchers were masked. If either is true, the lynching was a violation of Federal law. The Justice Department release did not say there was no evidence of a civil rights violation. It said "no other successful Federal prosecution could be maintained." This is a matter of opinion. Keating and Javits are covering up for Attorney General Rogers who would rather not get in hot water with Southern Senators by trying to prosecute the lynchers in the Federal courts.

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Norman Thomas and I. F. Stone Speak Monday, June 22 on "Fallout and Nuclear War"—Mt. Vernon Place M. E. Church 900 Mass. Ave., N. W., Washington, D. C., 8:30 P.M

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